

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59169; File No. SR-NYSEALTR-2008-18)

December 29, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Amending NYSE Alternext US, LLC Equities Rule 48.10 to Extend the Temporary Provisions of the Rule Relating to the Ability of the Exchange to Declare an Extreme Market Volatility Condition and Suspend Certain Exchange Requirements Relating to the Closing of Securities at the Exchange

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 24, 2008, NYSE Alternext US LLC (the “Exchange” or “NYSE Alternext”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Alternext US, LLC (“NYSE Alternext” or the “Exchange”) Equities Rule 48.10 to extend the temporary provisions of the rule relating to the ability of the Exchange to declare an extreme market volatility condition and suspend certain Exchange requirements relating to the closing of securities at the Exchange.

The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), NYSE Alternext, and the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Alternext Equities Rule 48.10 to temporarily extend the provisions of the rule relating to declaring an extreme market volatility condition at the close.

On November 26, 2008, NYSE Alternext filed a rule proposal to conform its rules to those of the New York Stock Exchange LLC ("NYSE").<sup>4</sup> Among the rules amended in that filing was Rule 48, which was previously amended by the NYSE. On October 2, 2008, the NYSE filed for immediate effectiveness to amend NYSE Rule 48 to provide the NYSE with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.<sup>5</sup> The NYSE amended Rule 48 on an immediate effectiveness basis in order to respond swiftly to market conditions at that time. Those amendments were adopted on a temporary basis with the understanding that if the NYSE

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<sup>4</sup> See Securities Exchange Act Release No. 34-59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10).

<sup>5</sup> See SEC Release No. 34-58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR-NYSE-2008-102).

would like to adopt the closing provisions on a permanent basis, such proposal must be filed under Section 19(b)(2) of the Act.<sup>6</sup>

The Exchange intends soon to file a rule proposal to amend NYSE Alternext Equities Rules 48 and 123C to delete from Rule 48 the provisions relating to declaring an extreme market volatility condition at the close and add them in modified form to Rule 123C (the “Rule 48/123C filing”). That rule proposal would be filed under Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”).<sup>7</sup> The Exchange now proposes to temporarily extend the NYSE Alternext Equities Rule 48 at-the-close provisions pending the outcome of the Rule 48/123C filing. Accordingly, the Exchange proposes to amend Rule 48.10 to provide that the provisions of that rule relating to declaring an extreme market volatility condition at the close will end on March 27, 2009.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> Id.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Alternext requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to extend without interruption the provisions of Rule 48 regarding the Exchange's ability to declare an

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

extreme market volatility condition at the close and suspend certain rules relating to closing of securities on the Exchange. These provisions are currently scheduled to expire on December 31, 2008. The Commission notes the Exchange's representation that it soon intends to file a proposal to establish permanent rules regarding closing of securities subject to an extreme order imbalance at the close. In light of the foregoing, the Commission designates the proposal operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEALTR-2008-18 on the subject line.

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<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEALTR-2008-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEALTR-2008-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).